RECENT IMPORTANT DECISIONS

BANKRUPTCY—INSURANCE POLICIES—CASH SURRENDER VALUE.—M., a bankrupt, held three tontine life insurance policies payable to himself, his executors, administrators or assignees. There was no agreement in the policies to pay a cash surrender value to any one upon default in paying premiums. By the terms of the policy the assured is excluded from any participation in dividends until the completion of the tontine period. It was the custom of the company, however, to pay the cash surrender value of a policy after it had lapsed. The trustee in bankruptcy seeks to keep these policies among the other assets of M. *Held,* that policies of this nature fall within the class having a "cash surrender value" under § 70 of the bankruptcy act, and that M. was entitled to retain them by securing to the trustee their surrender value. *Hiscock* v. *Mertens* (1907), 27 Sup. Ct. Rep. 488.

Sec. 70 of the bankruptcy act, so far as applicable to this case, provides, in substance, that when a bankrupt holds an insurance policy having a cash surrender value payable to himself, his estate, or personal representatives, he may hold and own the policy by paying or securing to the trustee its cash surrender value. There has been considerable conflict in the lower courts over the question involved in this case which will be finally settled by the present decision. Some of the courts have held, as did the District Court in the case under discussion, that the provision of § 70 applies only to those policies which, by their terms, provide for the payment of the surrender value when the policy has lapsed and which, therefore, gives the insured a right to demand payment, and does not apply to policies where the payment of the surrender value depends upon the option, or custom of the insurer. This was the view expressed by the courts in *Re Welling,* 113 Fed. 189, 51 C. C. A. 151; *In re Slingluff,* 106 Fed. 154; *Van Kirk* v. *Vermont Slate Co.,* 140 Fed. 38. In the case under discussion Mr. JUSTICE MCKENNA said, "the purpose of the provision was to confer a benefit upon the insured bankrupt by limiting the character of the interest in a nonexempt life insurance policy which should pass to a trustee, and not to cause such a policy when exempt to become an asset of the estate." The purpose of the statute was to confer a benefit upon the bankrupt and not to provide the manner in which it should be evidenced. The purpose of the statute would therefore be subserved whether the surrender value was provided for by the policy itself or was recognized by the custom of the company. The weight of authority has been in accordance with the decision in the present case. *In re Newland Fed. Cas.,* 10170; *In re McKinney,* 15 Fed. 535; *In re Julius Grahs,* 1 Am. B. R. 465; *In re Coleman,* 136 Fed. 818, 69 C. C. A. 496; *Gould* v. *New York Life Ins. Co.,* 132 Fed. 927; *In re Schofield,* 147 Fed. 862; *In re Holden,* 113 Fed. 141; *In re Diack,* 100 Fed. 770.

BANKRUPTCY—PARTNERSHIP AND INDIVIDUAL ASSETS.—H., who was a member of a copartnership, was duly adjudged a bankrupt and his individual assets were not sufficient to pay the individual creditors. The firm was also

insolvent, although not adjudged a bankrupt, with no living solvent partner. Firm creditors seek to prove their claims against the individual estate of H. and share pari passu with the individual creditors under § 5f of the Bankruptcy Act. *Held,* that only the surplus of the individual estate left after paying the individual creditors would be applied to the payment of firm debts. *Euclid Nat. Bank* v. *Union Trust & Deposit Co.* (1906), — C. C. A., 4th Circ. —, 149 Fed. Rep. 975.

There is such a diversity of opinion among the courts over the question here in controversy, that it is impossible to reconcile the different decisions. The general rule, as to the distribution of firm and individual assets, is that the firm assets be applied to the payment of firm creditors and the individual assets to the payment of individual creditors, and the surplus from either of these estates be distributed among the creditors of the other class who have not been paid in full. But the English courts recognized several exceptions to this general rule, one of which was that where there were no firm assets and no living solvent partner then the firm creditors might share pari passu with the individual creditors in the individual estate. *In re Budgett,* 2 Ch. 557. And the courts of this country construed the acts of 1841 and 1867 as having this exception ingrafted upon them. *In re Knight,* Fed. Cas. 7880; *In re Downing,* Fed. Cas. 4044; *In re Lloyd,* 22 Fed. 88; *In re Jewett,* Fed. Cas. 7304; *contra, In re Byone,* Fed. Cas. 2270; *In re Johnson,* Fed. Cas. 7369. Some courts even went to the extent of holding that though there were firm assets but only sufficient to pay the costs of reducing them to possession, then the firm creditors might share pro rata with the individual creditors in the individual assets. *In re Goedde,* Fed. Cas. 5500; *In re McEwen,* Fed. Cas. 8783; *In re Slocum,* Fed. Cas. 12951; *contra, In re Blumen & Co.,* 12 Fed. 489. Sec. 5f of the Act of 1898 materially changed the provision in respect to the distribution of firm and individual assets. It clearly provides that the firm assets shall be applied to the payment of partnership debts and the individual assets to the payment of individual debts, and the surplus from either estate be applied to the payment of debts of the other class that are still unpaid. The year after the present act was passed, JUSTICE LOWELL was given an opportunity to construe this section of the statute in *In re Wilcox,* 94 Fed. 84. After an exhaustive review of the history and law of the subject he concluded that the language used in the present act was too clear to admit of doubt and that § 5, f. was adopted without the exception that had been engrafted in the old law. The trend of the modern law is toward the rule laid down in the above case. *In re Janes,* 133 Fed. 912; *In re Henderson,* 142 Fed. 588; *In re Corcoran,* 12 Am. B. R. 283, although some courts still hold to the old rule. *In re Conrader,* 118 Fed. 676; *Conrader* v. *Cohen,* 9 Am. B. R. 619, 121 Fed. 801. Other courts while not holding to the rule laid down in the last two cases, still think that it is too broadly stated in the *Wilcox* case and therefore make an exception in those instances where the copartnership property has been turned over to one of the partners who has become bankrupt, and allow the firm creditors to share pari passu in the individual estate. *In re Green,* 116 Fed. 118; *In re Keller,* 109 Fed. 118.